

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD REES, et al.,) 1:05-cv-00297-LJO-SMS
)
Plaintiffs,) ORDER BIFURCATING LIABILITY ISSUE
v.) OF THE APPLICABILITY OF THE MOTOR
) CARRIERS SAFETY EXCEPTION
SOUZA'S MILK TRANSPORTATION)
CO., et al.,) ORDER CONTINUING PLAINTIFFS'
) MOTION FOR TERMINATING AND
Defendants.) MONETARY SANCTIONS (DOC. 157) AND
) DEFENDANTS' CROSS-MOTION FOR
) MODIFICATION OF DISCOVERY ORDER
(DOC. 169) AND RESETTING HEARING,
OR, ALTERNATIVELY, A TELEPHONIC
STATUS CONFERENCE
Date: April 24, 2008
Time: 10:00 a.m.
Courtroom: 7

ORDER SETTING INTERIM DEADLINE
FOR COMPLETED PRODUCTION OF
DOCUMENTS
Date: April 4, 2008

ORDER SETTING SETTLEMENT
CONFERENCE AND DIRECTING
SUBMISSION OF SETTLEMENT
CONFERENCE STATEMENT
Date of Conference:
June 5, 2008
Time: 10:00 a.m.
Courtroom: 7

ORDER VACATING PRETRIAL
CONFERENCE AND TRIAL DATES

1 Plaintiffs are proceeding with a civil action in this Court.
2 The matter has been referred to the Magistrate Judge pursuant to
3 28 U.S.C. § 636(b) and Local Rules 72-302(c)(1) and 72-303.
4 Pending before the Court are Plaintiffs' motion for terminating
5 sanctions and for monetary sanctions, and Defendants' cross-
6 motion for modification of the discovery order. The matters
7 proceeded in the chambers of the undersigned Magistrate Judge and
8 off the record at the time previously set for the hearing on the
9 motions, January 25, 2008, at 9:30 a.m. Mr. Jerry Budin appeared
10 and participated on behalf of Plaintiffs, and Mr. David A. Dixon
11 appeared and participated on behalf of Defendants.

12 I. Bifurcation of the Proceedings

13 A court has inherent power to control its docket and the
14 disposition of its cases with economy of time and effort for both
15 the court and the parties. Landis v. North American Co., 299 U.S.
16 248, 254-255 (1936); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th
17 Cir. 1992).

18 The Court may order a separate trial of any claim, cross-
19 claim, counterclaim, third-party claim, or of any issue in
20 furtherance of convenience, to avoid prejudice, or when separate
21 trials will be conducive to expedition and economy. Fed. R. Civ.
22 P. 42(b). Determination of a motion for separate trials is within
23 the Court's sound discretion. Jinro America Inc. v. Secure
24 Investments, Inc., 266 F.3d 993, 998 (9th Cir. 2001). Factors
25 customarily considered in the determination include convenience,
26 prejudice, judicial economy, risk of confusion, and separability
27 of issues. See Robert E. Jones, Gerald E. Rosen, William E.
28 Wegner, & Jeffrey S. Jones, Federal Civil Trials and Evidence,

1 2003 ed., § 4:492.

2 Here, in view of the Court's recent ruling of December 14,
3 2007, on Plaintiff's motion for summary adjudication, and further
4 considering the parties' progress in meeting and conferring
5 regarding the scope of document production relating to the motor
6 carrier safety exemption that should be required in light of that
7 ruling, the Court concludes that bifurcating liability issues,
8 and specifically, the applicability of the motor carrier safety
9 exemption, from the other issues in this action would be
10 convenient. After an extended off-record conference, the Court
11 discerns no objection to such bifurcation, and it is aware of no
12 claim of prejudice other than the impossibility of readiness for
13 the presently scheduled pretrial conference and court trial, a
14 matter which is remedied by vacating those dates. The issues are
15 severable, and the discovery related to each phase is to some
16 extent discrete. Determination of the liability issue or issues
17 may completely eliminate the need for adjudication of damages
18 issues, and, more directly, is likely to facilitate a meaningful
19 settlement discussion, which both parties desire. A settlement
20 conference will be set pursuant to counsel's request. Thus,
21 bifurcation would further judicial economy and expedition. Some
22 minimal lessening of confusion of issues might result, but in
23 view of the nature of the action and the fact that the trial will
24 be a bench trial, this is not a significant factor here.

25 After consideration of all these factors and after
26 conferring with the District Judge, the Court determines that
27 bifurcation is appropriate.

28 Accordingly, it IS ORDERED that the issue of liability,

1 including the applicability of the motor carrier safety
2 exemption, IS BIFURCATED from the other issues in the case, and
3 will be tried by the Court before other issues relating to
4 damages are tried.

5 II. Dates for Production of Discovery, and Hearing or,
6 in the Alternative, Telephonic Status Conference

7 The hearing on the pending motions did not proceed. Instead,
8 counsel engaged in a lengthy, off-record session of meeting and
9 conferring in chambers with the Court concerning the pending
10 motions, a discovery plan, a settlement conference, and the scope
11 of discovery in this action. Because the recent ruling on the
12 motion for summary adjudication clarified legal issues concerning
13 the motor carriers safety exemption from liability, the scope of
14 discovery was again addressed and discussed. In an effort to
15 facilitate timely production of documents pertinent to the
16 applicability of the exemption and the Defendants' liability, and
17 further in order to promote the sharing of data sufficient to
18 permit intelligent assessment of the risk of application or non-
19 application of the exemption, and ultimately potential settlement
20 and/or trial of the case, counsel agreed to defer seeking an
21 immediate ruling on the pending motions for terminating sanctions
22 and modification of discovery orders. Counsel agreed to continue
23 to meet and confer concerning outstanding discovery consisting
24 principally of production of documents (requests 4 and 10
25 concerning the exemption, and request 3 concerning payroll
26 records throughout the potential period of liability).

27 Specifically, counsel for Defendant agreed to produce
28 documents pertinent to the exemption issue and a determination of

1 the character of Defendant's trucking as interstate or intrastate
2 commerce and, specifically the percentages thereof, in order to
3 facilitate assessment of the relative merits of the parties'
4 cases insofar as they involve the application of the motor
5 carriers safety exemption. Counsel discussed production of
6 general and specific documents, including some substantial and
7 sufficient sampling of specific, supporting documents such as,
8 but not limited to, bills of lading, in order to reflect fairly
9 the character of Defendant's trucking; counsel discussed
10 production of documents concerning the total volume of business
11 (hauls and dollars), the percentage of business of some major
12 customers, and within those broader categories, the routes,
13 character of goods, destinations, and hauls. Counsel anticipated
14 a rolling course of production as part of a continuing effort to
15 meet and confer on the nature and extent of the production
16 required in order for the parties to be in a position to engage
17 in meaningful settlement discussions and thereafter, in the
18 absence of settlement, to proceed in an orderly course to trial
19 of all issues. The Court remains ready to assist the parties with
20 informal telephonic discovery conferences if needed.

21 Therefore, the parties ARE DIRECTED to continue to meet and
22 confer, and Defendants ARE DIRECTED TO COMPLETE PRODUCTION of all
23 documents responsive to requests 4 and 10 concerning the
24 applicability of the motor carrier safety exemption NO LATER THAN
25 APRIL 4, 2008.

26 Further, based on the consent of counsel, and in the
27 exercise of its discretion to control its docket and to conserve
28 the resources of the Court and the parties, the Court CONTINUES

1 the hearing on Plaintiff's motion for terminating sanctions and
2 monetary sanctions, as well as Defendant's cross-motion for
3 modification of discovery orders, until April 24, 2008. It is not
4 anticipated that the Court will have a formal hearing on the
5 motions on that date; rather, a telephonic discovery status
6 conference will be held regarding the status of the discovery at
7 that time.

8 At the discovery conference held in chambers, Plaintiffs'
9 counsel stated that his immediate goal was the completion of
10 discovery, as distinct from the termination of the case for
11 discovery noncompliance, and he expressed a willingness to defer
12 the consideration and determination of the issue of terminating
13 sanctions in the interest of obtaining adequate discovery to
14 permit intelligent assessment of the liability aspects of the
15 case. Therefore, the Court has directed the continuance of the
16 full hearing on the motion for terminating and monetary
17 sanctions, and on the Defendants' motion for modification of the
18 discovery orders; further, the Court has agreed to additional
19 time for the discovery process.

20 However, the Court has serious concerns with the delay
21 caused to the Plaintiffs by the Defendants' failure to meet and
22 confer regarding ongoing discovery issues, participate in the
23 preparation of joint statements regarding discovery disputes, and
24 object responsibly to the reasonable discovery requests of
25 Plaintiff. The Court also is deeply concerned about the
26 Defendants' repeated and apparently unjustified failure to comply
27 with the Court's previous discovery orders. The Court notes that
28 separate and apart from failing to produce requested discovery,

1 Defendants and/or their counsel have failed to comply with the
2 Court's previous order of payment of \$500.00 by Defendants and
3 Defendants' counsel by November 2, 2007.

4 Therefore, the Court has determined to continue the matter
5 of monetary sanctions only because of the continuing willingness
6 of the parties and counsel to proceed in good faith to expedite
7 discovery and work efficiently, cooperatively, and in good faith
8 as officers of the Court to explore settlement and ultimate
9 preparation of the case for trial.

10 III. Settlement Conference

11 On July 24, 2007, the Court vacated a settlement conference
12 dates after Plaintiffs' counsel advised the Court that it would
13 not be productive; the parties were to contact the Court for a
14 new settlement conference if they felt it could be productive. A
15 letter to the Court from Plaintiff's counsel dated July 13, 2007,
16 and filed thereafter, requested vacating the conference but
17 rescheduling it after defense counsel responded to Plaintiff's
18 counsel's request for new dates. There is no further entry in the
19 minutes concerning a settlement conference.

20 It presently appears that a settlement conference, set for a
21 time after production of documents has been completed, could be
22 productive.

23 Therefore, counsel and the parties ARE DIRECTED TO APPEAR at
24 a settlement conference on June 5, 2008, at 10:00 a.m.

25 Counsel ARE FURTHER INFORMED that a Confidential Settlement
26 Conference Statement IS MANDATORY, and must be submitted to Judge
27 Snyder's chambers, at least five (5) court days prior to the
28 Settlement Conference, by e-mail to SMSOrders@caed.uscourts.gov.

1 Failure to so comply may result in the imposition of monetary
2 and/or other sanctions.

3 Further, counsel ARE DIRECTED to comply with all pertinent
4 directions concerning the settlement conference and the
5 settlement conference statement as set forth in the Court's
6 scheduling conference order of June 12, 2007.

7 IV. Vacating Pretrial Conference and Trial Dates

8 After a full discussion with counsel in chambers, the Court
9 concludes that adherence to the presently set trial date of March
10 24, 2008, would result in prejudice to the parties, and that
11 there is no realistic possibility of readiness for a pretrial
12 conference presently set for February 8, 2008. Because the
13 parties are meeting and conferring in good faith in a continuing
14 effort to complete discovery efficiently in light of the recent
15 rulings of the Court, the Court has determined that a change in
16 the trial and pretrial conference dates is in the interest of
17 justice.

18 Accordingly, the Court VACATES the presently set pretrial
19 conference date of February 8, 2008, and the presently set trial
20 date of March 24, 2008. The Court anticipates re-setting these
21 dates at the telephonic status conference of April 24, 2008.

22 IT IS SO ORDERED.

23 Dated: January 29, 2008

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE